

August 29, 2003

Mr. Richard A. Malagisi  
Sweet Grass County Attorney  
P.O. Box 1188  
515 Hooper Street  
Big Timber, MT 59011

Dear Mr. Malagisi:

You have requested an opinion from the Attorney General regarding an interpretation of Mont. Code Ann. § 75-10-501(4) which defines “junk vehicle.” I have rephrased the question you presented as follows:

May a vehicle that has been lawfully and validly licensed be classified as a junk vehicle pursuant to the terms of Mont. Code Ann. § 75-10-501(4) and be subject to the shielding provisions of Mont. Code Ann. § 75-10-505.

The plain language of the statute at issue, as well as the Montana Supreme Court’s interpretation of the statute provide the response to your question, and it has therefore been determined that a letter of advice rather than a formal opinion is appropriate.

Initially, you ask whether a person in possession of a junk vehicle may avoid the shielding requirements of Mont. Code Ann. § 75-10-505 “by simply licensing the vehicle(s)?” By assuming that the vehicle in question is a junk vehicle, you beg the question, since the definition of “junk vehicle” as set forth by the legislature excludes a vehicle that has been validly licensed.

Mont. Code Ann. § 75-10-501(4) defines a junk vehicle as follows: “a discarded, ruined, wrecked, or dismantled motor vehicle, including component parts, that is not lawfully and validly licensed and remains inoperative or incapable of being driven.” The definition includes three requisite elements before a vehicle can be classified as a junk vehicle: 1) the vehicle must be discarded, ruined, wrecked, or dismantled; 2) the vehicle must not be lawfully and validly licensed; and 3) the vehicle must not be operable or

capable of being driven. The statute is written to give equal weight to all three elements and all must be in existence before a vehicle may be classified as a “junk vehicle.”

This interpretation is supported by the Montana Supreme Court’s decision in Springer v. Becker, 284 Mont. 267, 943 P.2d 1300 (1997). In Springer, the Court upheld the District Court’s finding that the plaintiff’s vehicle was not a junk vehicle as defined by Mont. Code Ann. § 75-10-501(4). The Court found that it was uncontroverted that the plaintiff’s vehicle was capable of being operated and driven. 284 Mont. at 273. Because all three elements of Mont. Code Ann. § 75-10-501(4) were not satisfied, the Court held that the District Court had properly determined that plaintiff’s vehicle was not a junk vehicle as defined by the statute. Id.

Thus, the plain language of the statute and the decision of the Court interpreting the statute provide a clear answer to the question presented: a lawfully and validly licensed vehicle is not a “junk vehicle” pursuant to Mont. Code Ann. § 75-10-501, and the shielding requirements of Mont. Code Ann. § 75-10-505, therefore, do not apply.

You attempt to make a distinction between a “lawful” and “valid” license. You state that it is your opinion that while a person may obtain a lawful license, “if the vehicle is discarded, ruined, wrecked, or dismantled, and remains inoperable or not capable of being driven, . . . if a license is attained, . . . it is not a valid license.” You contend that your argument is supported by Mont. Code Ann. § 61-3-301, which requires that motor vehicles operated or driven on the public highways of Montana be properly registered.

Registration is a legal requirement for driving or operating a vehicle in Montana. The statutes governing vehicle registration do not require as a prerequisite that a vehicle be operable or capable of being driven. If they did, a temporarily disabled vehicle could not be registered, and vehicle registration once issued would become invalid every time a vehicle broke down, however temporarily. Moreover, your interpretation would require a the Motor Vehicle Division to make a determination of the condition and operability of each vehicle whenever a vehicle is registered or its registration is renewed. The Division does not currently make such a determination when it registers a vehicle. It would be beyond its capability to do so, given the hundreds of thousands of vehicles it registers annually, the very limited number of clerical personnel in the county offices that perform the registration functions, the sometimes difficult factual determinations that these employees would be required to make as to whether a mechanical problem in a particular vehicle rendered it “disabled” (a determination which these clerical employees would have no training to make), and the fact that the law does not even require that the vehicle be present (and thus available for inspection by the employees) at the county courthouse when the registration is issued or renewed.

Mr. Richard A. Malagisi

August 29, 2003

Page 3

I would note finally that the abandoned vehicle statutes found in Mont. Code Ann. Tit. 61, ch. 12, pt. 4, may apply to ameliorate some of the supposed ineffectiveness of the junk vehicle statutes that concerns you. Mont. Code Ann. § 61-12-401 allows local law enforcement to impound a vehicle that is abandoned on a public street or highway, making no distinction between vehicles that are registered and those that are not. While this provision would not address the problem of vehicles abandoned off-road, it would allow for the removal of at least some of the troublesome vehicles with which your question is concerned. Any further refinements in the junk vehicle system would seem to require action by the legislature.

This letter of advice may not be cited as an official opinion of the Attorney General.

Sincerely,

EXECUTIVE SERVICES BUREAU

BRENDA NORDLUND

Assistant Attorney General

bn/jym